

The Honorable Samuel J. Steiner  
Chapter 11

Hearing Date: April 15, 1994

Hearing Time: 9:00 a.m.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re:	)	No. 94-00542
	)	
UNITED MARINE SHIPBUILDING, INC.,	)	
d/b/a Marine Power & Equipment Co.,	)	ORDER APPROVING
Inc., a Washington corporation,	)	APPLICATION FOR ORDER
	)	AUTHORIZING TRUSTEE TO
Debtor.	)	LEASE DEBTOR'S ASSETS

This matter came on regularly for hearing before the undersigned judge on the Trustee's Application for Order Authorizing Trustee to Lease Debtor's Assets to Tippet Shipbuilding, Inc. ("Motion"). The parties supporting and objecting to the Motion appeared through their respective attorneys of record. The Court having considered the pleadings and materials filed in connection with the Motion, statements of counsel, and the pleadings and records on file herein, and having found and concluded that the proposed lease is in the best interest of the estate, and the Court being otherwise duly advised, it is hereby

1           ORDERED as follows:

2           1.    The proposed lease, a copy of which is attached hereto,  
3           ("Lease"), as modified by the attached Modifications, and as  
4           further modified by this order, ("Lease"), is approved.

5           2.    Tippett Shipbuilding, Inc. ("Tippett") shall pay rent to  
6           the Department of Natural Resources ("DNR"), for submerged  
7           properties owned by DNR and to be occupied by Tippett under the  
8           Lease, the amount of \$2,000 per month. Such rent shall be paid in  
9           accordance with a short term lease to be drafted and executed by  
10          Tippett and DNR.

11          3.    Of the total monthly lease payment payable by Tippett to  
12          the Estate under the Lease, the Trustee shall pay monthly:

13               (a)   \$2,000 to the Department of Ecology and the  
14               Environmental Protection Agency ("Environmental  
15               Agencies");

16               (b)   \$2,000 into a separate account held by the Trustee.  
17               Upon the closing of the sale of assets to Northlake  
18               Shipyard, Inc. ("NSI"), approved by separate order of  
19               this Court, the funds in this account shall be deposited  
20               into the environmental fund created pursuant to agreement  
21               between NSI and the Environmental Agencies, and shall be  
22               credited to the total amount payable by NSI to the  
23               Environmental Agencies under such agreement.

24               (c)   \$6,750 to the estate;

25               (d)   \$1,500 to Ray Holland;

1           4.   None of the cash payable to the Environmental Agencies or  
2 DNR under the Lease or this Order shall be in satisfaction of, or  
3 shall have any impact on, the existing consent decree and shall not  
4 constitute a release or a covenant not to sue under the Model Toxic  
5 Control Act.

6           5.   Evergreen, as the holder of a secured claim encumbering  
7 certain equipment collateral ("Collateral"), shall have the right  
8 to store the Collateral on the Premises (as defined in the Lease)  
9 until June 30, 1994 and take reasonable steps to prepare the  
10 Collateral for disposition. The parties acknowledge that the  
11 location, removal and the assembly of the Collateral may require  
12 two representatives of Evergreen to work full-time for a period of  
13 approximately two weeks. In addition, the parties acknowledge that  
14 any auction conducted by Evergreen at the site may require the  
15 shipyard to be closed on a weekday for a twenty-four hour period  
16 ("Day of Closure") and that successful purchasers at such auction  
17 or sale may require two weeks to enter onto the Premises to remove  
18 purchased equipment. Activities of Evergreen and/or its invitees  
19 shall not impede Tippet's normal business operations on the  
20 Premises, other than on the Day of Closure. All of Evergreen's  
21 (and its invitees') activities shall be completed by June 30, 1994.

22           6.   Evergreen agrees to indemnify and hold Tippet, NSI and  
23 the Estate harmless for any and all claims arising from or in  
24 connection with the removal, assembly, disposal or sale of the  
25 Collateral. Additionally, Evergreen shall be strictly liable to  
26 the Estate, Tippet, and/or NSI for any damage to their respective

1 property interests to the extent such damage is the result of  
2 actions or activities by Evergreen, its agents and/or its invitees.

3 7. The claim of IBU is not entitled to priority and is an  
4 unsecured claim in this Case, and IBU's objection is overruled.

5 8. The Motion is granted.

6 DATED: April 15, 1994

7 \_\_\_\_\_  
8 Samuel J. Steiner  
United States Bankruptcy Judge

9 Presented by:

10 FORSCH McCARTY

11 By \_\_\_\_\_  
12 Michael B. McCarty, #13162  
Chapter 11 Trustee

13 Approved as to form; notice of  
14 presentation waived:

15 LANE POWELL SPEARS LUBERSKY

GRAHAM & DUNN

16 By: \_\_\_\_\_  
17 Bruce W. Leaverton #15329  
Attorneys for Evergreen Marine  
18 Leasing, Inc.

By: \_\_\_\_\_  
Irvin W. Sandman #11169  
Attorneys for Northlake  
Shipyard, Inc.

19  
20 AIKEN ST. LOUIS & SILJEG

BOELTER & GALE

21 By: \_\_\_\_\_  
22 James R. Woepfel #  
Attorneys for Tippet Ship-  
23 building, Inc.

By: \_\_\_\_\_  
JoAnne Lipson #  
Attorneys for Ray Holland

1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

UNITED STATES OF AMERICA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AGENCY

3 By: \_\_\_\_\_  
4 Assistant Attorney General  
5 WSBA#

By \_\_\_\_\_  
Assistant U.S. Attorney  
WSBA#

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MODIFICATIONS TO LEASE BETWEEN  
UNITED MARINE SHIPBUILDING, INC. and  
TIPPETT SHIPBUILDING, INC.  
ATTACHED AS EXHIBIT "A"

Exhibit "A", as amended by these modifications, is hereafter referred to as the "Lease". Exhibit "A" is modified as follows:

1. The total monthly Lease payment shall be \$12,250. Tippet Shipbuilding, Inc. ("Tippet") shall pay \$12,250 for the lease of the real property, docks, drydocks and related personal property and \$1500 for the lease of the drydock water treatment equipment and all other equipment or property in which a security interest is held by Ray Holland.
2. The Lease shall terminate on June 30, 1994.
3. Tippet agrees to perform certain repairs on the three drydocks, as set forth in Exhibit "B", during the term of the Lease.
4. Northlake Shipyard, Inc. ("NSI") which holds security interests in certain property of the Debtor, shall be named as a Loss payee on all property insurance on the drydocks and real estate subject to this Lease.
5. NSI shall have the right to use the large drydock being leased to Tippet, for a period of up to fifteen (15) days during the calendar month of April 1994, in exchange for paying all insurance costs relating to NSI's use of that drydock.
6. NSI shall have the right of reasonable access to the leased Premises during the term of the Lease. NSI shall also have the right of reasonable access to the office building on the Premises, for purposes of making such repairs as it deems appropriate, at its cost. In connection with any such repairs or improvements undertaken by NSI, the requirements and obligations of Tippet under paragraph 14 of Exhibit "A" shall not apply.
7. NSI's use of the Premises, or any portion, shall be in accord with all governmental or regulatory requirements.
8. NSI agrees to unconditionally and without limitation, indemnify, defend, and hold harmless Lessee (including its directors, officers, agents or employees), and/or its assigns, and each of them, from and against any and all claims, liabilities, demands, damages, losses, costs and expenses (including interest, penalties and reasonable attorneys' fees incurred and the costs of litigation)



which are caused or alleged to have been caused by i) NSI and/or its invitees, licensees, guests, customers or suppliers or which arise out of, or relate to or on account of NSI's use of the Premises, ii) the conduct of NSI's business or from any activity, work or other things done by NSI in or about the Premises, iii) any breach or default in the performance of any obligation to be performed by NSI under the terms of this Lease Agreement or iv) negligent or intentional acts or omissions of NSI and/or its invitees, licensees, guests, customers or suppliers. Additionally, NSI and Tippet shall waive any subrogation rights they may have, pursuant to the provisions of paragraph 21 of attachment A.

9. The personal property encumbered by the security interest held by Evergreen Marine Leasing, Inc. shall not be subject to this Lease.
10. NSI's consent to this Lease is conditioned on the Court's approval of the Trustee's motion for sale of certain assets of the Debtor to NSI, on such terms as set forth in the Trustee's motion of March 29, 1994, or on such other terms as may be agreed to by NSI, the Trustee and the Court.
11. NSI expressly agrees to be bound by the terms of the Lease for any period after the closing of any sale pursuant to the Trustee's motion as described in paragraph 10 above, or any similar sale, through the term of the Lease.
12. If there should be a conflict between the terms of Exhibit "A" and these modifications, the terms of these modifications shall prevail.
13. Tippet shall perform the following repairs relating to the safety of the dry docks:

Dry Dock #6:

- (1) Repair #30 overboard discharge valve
- (2) Repair #6 valve (#2 Wing tank)
- (3) Replace stern gate seal
- (4) Repair Tank Level Indicators (as per Keenholts)
- (5) Reweld aft spud holder
- (6) Install hangers on stern gate hydraulic lines
- (7) Put lights in all compartments
- (8) Install discharge line from vacuum pump
- (9) #1 and #2 main pumps need repairing
- (10) West crane pickup reel needs repair
- (11) Close up opening on deck and replace cowling  
(Note: this was opened, and cowling partly destroyed on March 25 - postpetition, by order of management)

- (12) All hand railings brought up to ABS or OSHA standards
- (13) Any fire lines that need repairing, repair
- (14) All oil leaks repaired and existing oil contamination cleaned up.

## Dry Dock #2:

- (1) Descale pump room and paint
- (2) Get T.L.I. system working
- (3) Repair #3 Flood Valve controller
- (4) Replace bad slider blocks
- (5) Replace closed indicator light socket for #2 Flood valve
- (6) Repair indicator for #5 flood valve
- (7) Repair indicator for #8 flood valve
- (8) Repair indicator for #6 flood valve
- (9) Install vacuum gages in #5-7 and #6-8
- (10) Install new vacuum piping in #6-8 compartment
- (11) Install A.C. motor on #3 Flood valve acuator
- (12) #4 Flooding valve needs repair
- (13) Some electrical needs repair: shore power plugs, lights
- (14) Needs some new fire lines
- (15) Many flush hatches on deck need gaskets and new studs
- (16) All hand railings brought to ABS or OSHA standards

## Dry Dock #9:

- (1) Finish descaling decks up to the first longitudinal in all compartments, paint
- (2) Repair leak in #6 suction pipe
- (3) Replace #3A Flooding valve
- (4) Repair switch on N.W. Captsin
- (5) Blank fire main risers from Sea Chests on #5, 5A, 7
- (6) Repair hinge on hatch to #6-8 compartment
- (7) Install new 3A flood valve
- (8) Pump #5A repair
- (9) Repair cat walks
- (10) 8x8 Rub rails repaired, replaced as needed
- (11) All hand railings brought to ABS or OSHA standards
- (12) Repair fire lines as needed
- (13) Repair all T.L.I. In three dry docks the heating systems and ventilation systems are not in full operation. Repair as needed.

PROVIDED, however, that Tippet's obligation to perform such repairs shall not require Tippet to commit to such



repairs more than the amount of four percent (4%) of all gross revenues derived from operations at the Premises during the term of the Lease.

DATED: April 4

United Marine Shipbuilding, Inc.

By \_\_\_\_\_  
Michael B. McCarty  
Trustee of its Bankruptcy Estate

Tippett Shipbuilding, Inc.

By \_\_\_\_\_  
Its:

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